

Exhibit 41

United States of America ex rel. Ven-a-Care of the Florida Keys, Inc. v. Boehringer Ingelheim Corp. et al.

Civil Action No. 07-10248-PBS

Exhibit to the August 28, 2009 Declaration of James J. Fauci In Opposition To
Corrected Boehringer Ingelheim Corporation and Boehringer Ingelheim Pharmaceuticals, Inc.
Local Rule 56.1 Statement of Undisputed Material Facts
in Support of Their Motion For Summary Judgment



M E M O R A N D U M

TO: John Powers
FROM: Kelli Self
DATE: February 18, 1998
SUBJECT: PREMIER Bid Analysis

FILE

CUSTOMER: PREMIER, Inc.
Westchester, IL

CONTRACT NUMBER: 9801036(PREMIER)
9801037(PREMIER PROVIDER SELECT)

EFFECTIVE DATES: 7/1/98-6/30/00(2 year items)
7/1/98-6/30/99(1 year items)
Dates are the same for both the PREMIER &
PREMIER PROVIDER SELECT contracts.

ACTUAL SALES: \$17,241,458(last 12 months-all divisions combined)

POTENTIAL SALES: \$ To be determined

GROUP SYNOPSIS: PREMIER is Roxane's #1 Customer and our largest National GPO. PREMIER is comprised of 2,004Hospital members, 182 Alternate Care members, and 187 Retail members. The HMO division is handled through the San Diego office. There have been a number personnel changes and we continue to learn about the corporate structure.

CONTRACT ANALYSIS -

STRENGTHS:

- Full product line contract.
- Average per member sales is \$9,402.
- No dual awards, exception of ORA SR.
- 28 products make-up PREMIER's top 80% of sales and all 28 products fall in our top 10 customer list for those products.
- Average contract gross margin is 47.8%.
- 97 contract sales have increased 50% over 96 contract sales.

WEAKNESSES:

- Ipratropium makes up 55% of the Premier's total sales. (\$9,127,384).

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THREATS:

- **Products**
 - Ipratropium 25's & 30's=\$9,127,384(Roxane's #1 Customer)-Dey competition
 - Milk of Magnesia 30ml UD=\$153,031(Roxane's #1 Customer)-Increased product costs
 - Lidocaine 2% 100ml=\$\$135,336(Roxane's #1 Customer)-Increased product costs
 - Potassium Chloride 10% 15ml UD=\$113,808(Roxane's #1 Customer)-Increased product costs
 - Lactulose Soln 500ml=\$110,969(Roxane's #2 Customer)-Increased product costs
 - Furosemide Tabs 40mg UD=\$97,936(Roxane's #1 Customer)-Increased product costs/Material shortage
 - Furosemide Soln 60ml=\$93,897(Roxane's #2 Customer)-Material shortage
 - Acet Soln 20.3ml UD=\$82,449(Roxane's #1 Customer)-Increased product costs
 - Furosemide Soln 5ml UD=\$60,849(Roxane's #1 Customer)-Material shortage
- Bundle proposals from other companies.

OPPORTUNITIES:

- Bundle of Roxane, BI, and Ben Venue products
- Regain Cocaine Topical Soln 4% & 10% business (\$277,603 potential)
- Regain Haloperidol OS 15ml & 120ml business (\$12,099 potential)
- Regain Hydromorphone Tabs 2mg & 4mg business (158,264 potential)
- Regain Lithium Syrup 5ml & 10ml UD business (\$13,292 potential)
- Regain Mexiletine bulk & UD business (\$11,790 potential)
- Regain Morphine Soln 10mg/5ml 500ml business (\$29,077 potential)
- Regain Roxicet 1C & 5c business (\$56,990 potential)
- Regain Roxanol 120ml (\$60,000 potential)

TOP 5 DOLLAR ITEMS:

- 1.Ipratropium 25's-\$9,127,384
- 2.Sodium Polystyrene 60ml UD-\$908,130
- 3. Lactulose Soln 30ml UD-\$345,337
- 4. Ipratropium 30's-\$271,040
- 5. Lidocaine 4% 50ml-\$192,203

NATIONAL ACCOUNTS COMMENTARIES:

- Tom Via will be meeting with PREMIER 2/19/98. He will get clarification on the PREMIER and PREMIER Provider Select contracts.

GPO CHARACTERISTICS:

- No dual awards, exception of ORA SR.
- No incentive program or market share programs in place.
- PREMIER receives a 3% quarterly administrative fee.
- Administrative fee reports sent via EDI transmissions.

STRATEGY:

- Bundle of Roxane, BI, & Ben Venue products.
- Aggressively bid Top 80% items.
- Bid all items based on current costs and most recently received competitive information
- Achieve 20% GM on current costs.
- Sole source items to be bid as usual.
- Maintain nominal priced ORA SR.

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ITEMS NEEDING SPECIAL DISCUSSION:

- **Bundle Proposals**
- **New Service Provider Classifications**
 1. **Acute Non-Retail=Acute Care hospitals which use pharmaceuticals for their own operations, excluding operations, which compete with retail trade.**
 2. **Non-Acute Non-Retail=Health facilities which have no (or few) acute care beds and use pharmaceuticals for their own operations, excluding operations which compete with retail trade.**

Such facilities include, but are not limited to the following:

 - ambulatory surgery centers
 - long term care providers
 - diagnostic imaging centers
 - rehabilitation facilities
 - clinics
 - hospices
 3. **Managed Care Pharmacies=Staff/Group model managed care pharmacies (HMO). Other managed care pharmacies for the "at risk" portion of the business.**
 4. **Retail=Retail pharmacies open to walk-in trade.**
- **Will we offer pricing for each division and set-up only 4 divisions now?**
- **PREMIER PROVIDER SELECT contracts?**
- **Participating PREMIER members and membership exclusivity issue.**
- **Commonwealth of Puerto Rico pricing?**
- **EDI price catalog?**

RESULTS OF DISCUSSION:**Bedford Meeting, 2-20-98.**

- **Bundle of Bedford & Roxane & BI products. Two tier program. If Premier awards All Product Lines in Tier #1 both Bedford & Roxane will pay Premier a marketing fee equal to 2% of all Roxane and Bedford contract item sales under this agreement. In addition, NI, Inc. will agree to pay PREMIER, Inc. a marketing fee equal to 1% of all reported Boehringer contract item sales under this agreement. The term "All Product Lines" is defined as, representing all NDC numbers associated with the listed product name. The marketing fees generated from this proposal would be in addition to the contract administration fee agreed to in the bid response.**
- **Premier may increase the above fee by also awarding products from Group#2. The increases would be determined by the number of products awarded. The following options are listed below, as well as in Exhibit A.**
- **Should four (4) of the eight (8) product lines be awarded two (2) from each column, Premier Purchasing Partners would receive an additional .25% of All Sales (totaling 2.25%).**
- **Should six (6) of the eight (8) product lines be awarded three(3) from each column, Premier would receive an additional .50% of ALL sales (totaling 2/50%).**
- **Should all eight (8) product lines be awarded, Premier would receive an additional 1% of ALL sales (totaling 3%).**

The above percentages would be paid in addition to the the standard 3% administrative fee. All fees to be paid quarterly.

Ben Venue Premier Sales-\$22M
Boehringer Ingelheim-\$13M
Roxane-\$17M

\$14M Diltiazem Inj.
\$10M-AMDI
\$9M-lpra.

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2/25/98 Strategy Meeting with John Powers.

- Finesse Bedford letter to fit Roxane.
- Firm up 2nd tier level-go with products selected.
- Will tie in the Boehringer Commitment program.
- Copy Tom Via with a Confidential Copy.
- All other products bid aggressively if PREMIER is a top ten customer. Cover at least a 10% GM over direct cost.
- Offer A source net pricing.
- Offer Ipratropium at price of \$15.25 to counter Dey and potential new competitors.
- Oramorph SR strategy -will not offer nominal since we can't offer the same pricing to the acute non retail and non acute-non retail classes of trade.

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